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August 8, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MM Docket No. 97-138

Dear Mr. Caton:

Transmitted herewith on behalf of Salem Communications Corporation are an original and four copies of its Comments with regard to the Commission's Notice of Proposed Rulemaking, FCC 97-182, released May 28, 1997, in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
Counsel for Salem Communications Corporation

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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AUG 08 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's Rules) MM Docket 97-138
Regarding the Main Studio and Local)
Public Inspection Files of Broadcast)
Television and Radio Stations)

Directed to: The Commission

COMMENTS

Salem Communications Corporation ("Salem"), by its attorneys, hereby respectfully submits its Comments with regard to the Commission's Notice of Proposed Rule Making, FCC 97-182, released May 28, 1997, proposing changes in the broadcast main studio and local public inspection file rules. With respect thereto, the following is stated:

1. Salem supports the relaxation of both the local public inspection file rule (47 C.F.R. §§ 73.3526, 73.3527) and the main studio rule (47 C.F.R. § 73.1125). Salem previously submitted a Petition for Rule Making seeking amendment of the public inspection file rule to allow the files to be kept at a station's main studio, regardless of whether that studio is located within the city limits of the station's community of license. While Salem also supports relaxation of the main studio rule, Salem submits that the Commission may amend the public inspection file rule without regard to any action it may or may not take with regard to the main studio rule. The proposals set forth in the Notice of Proposed Rule Making are not necessarily interrelated, and

the Commission could easily allow licensees to maintain their public inspection files at their main studios without making any change in the main studio rule.

2. With regard to the local public inspection file, based upon its own experience, Salem strongly supports the proposed revision of the public inspection file rules to permit licensees to maintain their local public inspection files at their main studios, wherever located. Subsidiaries and affiliates of Salem are the licensees of numerous radio stations in communities throughout the United States. A number of these stations maintain public inspection files away from their main studio locations. In its experience, Salem has discovered that the Commission's rule requiring each licensee to maintain a public inspection file within the station's community of license, regardless of where the station's main studio may be located, does not serve the stated purpose of the rule and, in many instances, can be counterproductive. The location of a station's public file outside its main studio is not generally known to community residents. Moreover, when the file is maintained off the licensee's premises, it is subject to either deliberate tampering or inadvertent loss of documents. In addition, a public file location within a community of license is not required to be either convenient or attractive, and, in the interest of controlling expenses, less convenient and less attractive locations within a community may often be selected. Thus, while maintenance of a separate public file is expensive for the licensee, that expense is not justified by increased benefit to the public.

3. The Commission first required broadcast stations to keep local public inspection files in 1965. Records of Broadcast Licensees, 4 R.R.2d 1664 (1965), recon. granted in part, denied in part Inspection of Records, Pregrant Proceedings, and Local Notice, 1 F.C.C.2d 921 (1965). At that time, the Commission stated that the purpose of the local public inspection file was to allow

greater public participation in the Commission's processes. Id. at 1665, 1667. Up until that time, the information to be placed in the local public file was a matter of public record only at the Commission's offices in Washington, D.C. Obviously, this arrangement did not allow ready access to residents of communities located hundreds or thousands of miles away. The Commission stated that in instituting the requirement for a local public file, its "primary purpose ... is to make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in a dialogue with broadcast licensees." Id. at 1667. This goal, which remains in place, may better be served by maintenance of the public inspection file at the main studio.

4. It should be noted that at the time the rule first was proposed, it was phrased to require broadcast licensees to maintain local public files "in the community in which the main studio is located, or proposed to be located...." Id. at 1665 (emphasis added). At that time, most stations were required to have their main studios located within their communities of license. Nevertheless, the rule was phrased so that the main studio location and the required location of the public inspection file would be the same. Furthermore, it is clear that the Commission intended for licensees to keep their public inspection files at their main studios. On reconsideration, the Commission explicitly stated that the provision allowing licensees to keep the file at another accessible place in the community "was designed to cover situations in which an applicant does not have a studio, as, for example, in the case of an applicant for a construction permit for a new station." Inspection of Records, Pregrant Proceedings, and Local Notice, 1 F.C.C.2d at 924.

5. When a licensee does have a main studio, however, the focus of the community and its listeners is on the main studio location, and not on some separate and unpublicized public file location. In practice, requiring a station with a main studio location outside the city limits of its community of license to maintain a separate public file within the community imposes significant burdens on the licensee without any counterbalancing gain in accessibility for residents of the community. Indeed, in many instances, locating the public file away from the main studio may make viewing the information contained more inconvenient for community residents. The Commission should not assume that it is necessarily the case that a location within the city of license is more convenient to a city resident than one located outside the city limits. For example, it might be the case that the more heavily populated area of a city would be located on one side of town while the public inspection file could be all the way across town. In such a case, a public inspection file location in a suburb might actually be more convenient for city residents.

6. As an initial matter, the public generally associates a station with its main studio location. It is only logical to assume that all records associated with the station's business would be located at the main studio, the station's central business location. All a member of the public must do in order to ascertain the main studio location is look it up in the local telephone directory. Thus, it would be natural for someone to proceed directly to the main studio in order to view the public file.

7. On the other hand, if the public inspection file is located somewhere in the community of license away from the main studio, a member of the public has no way to consult a directory to determine the location of the file. Unless the interested party wishes to see the public file at a time when the station happens to be running a public notice including the file location, and

unless that party happens to hear or see the notice, the only way to find the location would be to visit or call the station. Therefore, members of the public who wish to inspect the local public file can be led to make a wasted trip to the main studio, only to find out that they must go somewhere else to view the file.

8. Even more importantly, having a public file located away from the licensee's main studio premises removes the file from the licensee's direct control. Even the most diligent licensee cannot be assured that its public inspection file will be complete at all times. Innumerable possibilities exist for documents to go astray. If the licensee mails a document to the public file location, it can be lost in the mail. If the document arrives safely by either mail or hand delivery, it may then be mis-filed by the person responsible for maintaining the file. If the document is filed properly the first time, if someone removes it to make a copy, it may not be replaced properly. If someone attempts to view the public file, he may encounter a particular employee who is not familiar with the public file or the requirements pertaining to it. Since the employees at the public file location do not work for the licensee, the licensee cannot control who may be assigned to answer public inquiries on a daily basis. Thus, even assuming that all parties act in good faith, the possibilities for something to go wrong are legion. Furthermore, when the file is away from the licensee's supervision, it is far more likely that someone would be able to pilfer documents or otherwise tamper with the file.

9. Nevertheless, the licensee is held responsible for maintaining a complete public file. When documents are missing, community residents are frustrated in their efforts to obtain information. Further, the Commission may impose a forfeiture on the licensee for failure to maintain a complete public file. As a practical matter, however, unless a licensee makes daily

visits to the file, it cannot be certain that the public file remains complete from day to day. For example, if the licensee visits once per month, it is possible that a document could be removed the day after that visit, and the file would remain incomplete for an entire month until the next inspection by the licensee.

10. All of the monitoring of a public inspection file off its premises imposes a considerable expense on the licensee. The licensee must divert an employee from other duties to go to the public file location and make sure that the file is in order. If something is found to be missing, the licensee must make another copy of that document, and an employee must make a separate trip to the file to replace the missing items. These expenses are in addition to the extra expenses for copying documents and any payments which must be made in order to keep a public file at a particular location. The direct and indirect costs of maintaining a public file apart from the main studio vary widely depending upon the station's location. In Salem's experience, in some locations, the costs can exceed \$40,000 per year.

11. These costs are not offset by a corresponding public benefit. The purported benefit of a public file location within the community of license is one which is rarely used by the public. During the three years preceding the filing of Salem's Petition for Rule Making, for the 12 Salem stations which then had main studios outside the community of license, members of the public have viewed the public inspection files located in the communities of license a combined total of two times. In contrast, five stations of the 12 stations with separated public files received requests to view the public file only at the main studio. Thus, locating the public file within the community of license does not appear to serve the purpose of the public file rules, namely, making information accessible to the public. Based upon Salem's experience, it appears that

members of the public seek information at the main studio, a station's visible location, and do not seek out an obscure public file location within the community of license. Therefore, permitting licensees to maintain their public inspection files at the main studio would actually increase the accessibility of information and would enhance opportunities for residents to engage in a meaningful dialogue with the station. Accordingly, the requested amendment to the Commission's Rules would serve the purpose of the rule better than the rule's current formulation.

12. Salem also supports the proposal to eliminate the requirement that licensees maintain a copy of the 1974 manual entitled "The Public and Broadcasting." As noted by the Commission in the Notice of Proposed Rule Making, this manual is long out of date. Indeed, the manual is so outdated that in some instances it provides misinformation. Therefore, it would be in the public interest to remove this document from station's public inspection files.

13. In addition, Salem supports the proposal to reduce the retention requirements for license assignment and transfer applications and applications for major modifications. While the public might have an interest in these applications during the time in which they are pending before the Commission or the courts, such applications would be of little relevance after action on the applications became final. Thus, licensees should be required to retain those applications only until action on the application becomes final.

14. With regard to the main studio location, Salem favors a relaxation of the Commission's Rules to allow placement of the main studio within 50 miles of the center of the community of license. This figure would be less than the possible distance from the community now allowable for some Class C1 and Class C stations which might have their transmitters

located at some distance from the community of license, with the main studio still further away from the community in the same direction. In theory, under the current rule, if a Class C station's transmitter were so located that its city grade contour barely encompassed the community of license, and if it located its main studio at the edge of the contour on the other side of the transmitter, the main studio could be located some eighty miles from the community of license.

15. Nevertheless, allowing main studios to be located within a 50 mile radius from the community of license would provide licensees, especially those of lower class stations, with additional flexibility. Furthermore, such a revision to the rules would allow Class A stations the same choices as those afforded to Class C stations. Thus, stations in the same market would be able to compete on a more equal footing. Moreover, with today's modern transportation and good roads, a distance of 50 miles may be covered with relative ease. Thus, the studio will remain accessible to the community of license.


16. Whatever standard is chosen for determining the main studio location, it should be possible to determine compliance objectively. A fixed mileage standard would accomplish this goal. Any rule which would require subjective analysis of the acceptability of a particular studio location, such as one specifying that a location be "reasonably accessible" would create uncertainty for licensees. Licensees using their best efforts to comply with the rule could never be certain whether the location which they might choose would later be found to be not in compliance with the main studio rules. Licensees then could find themselves in the position of being committed to a long term lease but being forced to find a new main studio location. Furthermore, any subjective standard is likely to generate litigation, as competitors or others

could file complaints alleging that a particular location did not meet the standards set forth in the rule. Such a result would be an unnecessary burden on the resources of both the Commission and licensees. Therefore, any revised main studio rule should embody an objective standard for determining where the main studio may be placed.

17. In sum, Salem favors revision of the public inspection file rules to allow licensees to maintain their public inspection files at their main studios, wherever located. This modification would retain or enhance the benefits to the public of readily accessible information concerning the station's performance while eliminating burdens on licensees. Salem also favors revision of the main studio rule to provide more flexibility in the choice of main studio locations.

Respectfully submitted,

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